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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 24, 2021**

SEAN F. MCAVOY, CLERK

9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

2:20-CR-00139-WFN

13 v.

Plea Agreement

14 JOSE FILIBERTO ARIZA, JR.,

15 Defendant.

16 Plaintiff, United States of America, by and through Joseph H. Harrington,  
17 Acting United States Attorney for the Eastern District of Washington, and Patrick J.  
18 Cashman, Assistant United States Attorney for the Eastern District of Washington,  
19 and Defendant and the Defendant's counsel, Colin Prince, agree to the following Plea  
20 Agreement:

21 1) Guilty Plea and Maximum Statutory Penalties:

22 The Defendant agrees to plead guilty to the sole count of the Indictment filed on  
23 October 21, 2020, charging the Defendant with Felon in Possession of Ammunition,  
24 in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). The Defendant understands that the  
25 charge contained in the Indictment is a Class C felony. The Defendant also  
26 understands that the maximum statutory penalty for Felon in Possession of  
27 Ammunition, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), is: (1) not more than  
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1 10 years imprisonment; (2) a fine not to exceed \$250,000; (3) a term of supervised  
2 release of not more than 3 years; and (4) a \$100 special penalty assessment.

3 The Defendant understands that a violation of a condition of supervised release  
4 carries an additional penalty of re-imprisonment for all or part of the term of  
5 supervised release without credit for time previously served on post-release  
6 supervision.

7 2) The Court is Not a Party to the Agreement:

8 The Court is not a party to this Plea Agreement and may accept or reject this  
9 Plea Agreement. Sentencing is a matter that is solely within the discretion of the  
10 Court. The Defendant understands that the Court is under no obligation to accept any  
11 recommendations made by the United States and/or by the Defendant; that the Court  
12 will obtain an independent report and sentencing recommendation from the U.S.  
13 Probation Office; and that the Court may, in its discretion, impose any sentence it  
14 deems appropriate up to the statutory maximums stated in this Plea Agreement.  
15 The Defendant acknowledges that no promises of any type have been made to the  
16 Defendant with respect to the sentence the Court will impose in this matter. The  
17 Defendant understands that the Court is required to consider the applicable sentencing  
18 guideline range, but may depart upward or downward under the appropriate  
19 circumstances.

20 The Defendant also understands that should the sentencing judge decide not to  
21 accept any of the parties' recommendations, that decision is not a basis for  
22 withdrawing from this Plea Agreement or a basis for withdrawing this plea of guilty.

23 3) Waiver of Constitutional Rights:

24 The Defendant understands that by entering this plea of guilty the Defendant is  
25 knowingly and voluntarily waiving certain constitutional rights, including:

- 26 a) The right to a jury trial;
- 27 b) The right to see, hear and question the witnesses;
- 28 c) The right to remain silent at trial;

- 1 d) The right to testify at trial; and  
2 e) The right to compel witnesses to testify.

3 While the Defendant is waiving certain constitutional rights, the Defendant  
4 understands the Defendant retains the right to be assisted through the sentencing and  
5 any direct appeal of the conviction and sentence by an attorney, who will be appointed  
6 at no cost if the Defendant cannot afford to hire an attorney. The Defendant also  
7 acknowledges that any pretrial motions currently pending before the Court are waived.

8 4) Elements of the Offense:

9 The United States and the Defendant agree that in order to convict the  
10 Defendant of Felon in Possession of Ammunition, in violation of 18 U.S.C. §§  
11 922(g)(1), 924(a)(2), the United States would have to prove beyond a reasonable  
12 doubt the following elements:

13 *First*, on or about July 2, 2019, the Defendant, in the Eastern District of  
14 Washington, knowingly possessed a single round of Federal, .45 Auto caliber  
15 ammunition, bearing head stamp "Federal 45 Auto";

16 *Second*, the ammunition had been shipped or transported in interstate or foreign  
17 commerce;

18 *Third*, at the time the Defendant possessed the ammunition, the Defendant had  
19 been convicted of a crime punishable by imprisonment for a term exceeding  
20 one year; and

21 *Fourth*, at the time the Defendant possessed the ammunition, the Defendant  
22 knew he had been convicted of a prior felony offense.

23 5) Factual Basis and Statement of Facts:

24 The United States and the Defendant stipulate and agree that the following facts  
25 are accurate; that the United States could prove these facts beyond a reasonable doubt  
26 at trial; and these facts constitute an adequate factual basis for Defendant's guilty plea.  
27 This statement of facts does not preclude either party from presenting and arguing, for  
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1 sentencing purposes, additional facts which are relevant to the guideline computation  
2 or sentencing, unless otherwise prohibited in this agreement.

3 On July 2, 2019, the Defendant reported to Washington DOC Officer Derek  
4 Bumgarner, located at 1821 North Maple Street, Spokane, Washington, within the  
5 Eastern District of Washington. DOC Officer Bumgarner escorted the Defendant to  
6 the restroom for a urinalysis test. Prior to starting the test, the Defendant emptied his  
7 pocket. DOC Officer Bumgarner observed that the Defendant removed one round of  
8 ammunition from his pocket. DOC Officer Bumgarner seized the round of  
9 ammunition and upon closer inspection saw that it was a Federal, .45 ACP caliber  
10 round of ammunition. Without questioning, the Defendant apologized and said he  
11 picked up the ammunition on the way to the office.

12 On January 28, 2020, SA James Butler conducted an interstate nexus  
13 examination of the ammunition. SA Butler determined that the ammunition was one  
14 round of .45 Auto caliber Federal Ammunition that was manufactured in either  
15 Minnesota or Idaho. Based upon his examination SA Butler determined the  
16 ammunition was manufacture outside of the State of Washington, therefore it travelled  
17 in interstate commerce.

18 The Defendant has previously been convicted of felony offenses in both State  
19 and Federal courts. The Defendant stipulates at the time of his possession of the  
20 ammunition he knew he was a convicted felon.

21 6) The United States Agrees Not to File Additional Charges:

22 The United States Attorney's Office for the Eastern District of Washington  
23 agrees not to bring any additional charges against the Defendant based upon  
24 information in its possession at the time of this Plea Agreement and arising out of  
25 Defendant's conduct involving illegal activity charged in this Indictment, unless the  
26 Defendant breaches this Plea Agreement any time before or after sentencing.

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1           7)     United States Sentencing Guideline Calculations:

2           The Defendant understands and acknowledges that the United States Sentencing  
3 Guidelines (hereinafter "USSG") are applicable to this case and that the Court will  
4 determine the Defendant's applicable sentencing guideline range at the time of  
5 sentencing.

6           a)     Base Offense Level:

7           The United States and the Defendant agree that the base offense level for Felon  
8 in Possession of Ammunition, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) is 14.  
9 See USSG §2K2.1(a)(6).

10          b)     Acceptance of Responsibility:

11          If the Defendant pleads guilty and demonstrates a recognition and an  
12 affirmative acceptance of personal responsibility for the criminal conduct; provides  
13 complete and accurate information during the sentencing process; does not commit  
14 any obstructive conduct; accepts this Plea Agreement; and enters a plea of guilty no  
15 later than March 24, 2021, the United States will recommend that the Defendant  
16 receive a two (2) level downward adjustment for acceptance of responsibility,  
17 pursuant to USSG §3E1.1(a).

18          The Defendant and the United States agree that the United States may at its  
19 option and upon written notice to the Defendant, not recommend a two (2) level  
20 downward reduction for acceptance of responsibility if, prior to the imposition of  
21 sentence, the Defendant is charged or convicted of any criminal offense whatsoever or  
22 if the Defendant tests positive for any controlled substance.

23          c)     Criminal History:

24          The United States and the Defendant understand that the Defendant's criminal  
25 history computation is tentative and that ultimately the Defendant's criminal history  
26 category will be determined by the Court after review of the Presentence Investigative  
27 Report. The United States and the Defendant have made no agreement and make no  
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1 representations as to the criminal history category, which shall be determined after the  
2 Presentence Investigation Report is completed.

3 8) Departures/Variance:

4 The Defendant intends to request a downward departure from the sentencing  
5 guidelines. The United States reserves its right to oppose any downward departure.

6 9) Incarceration:

7 The United States agrees to recommend that the Court impose a sentence at the  
8 low-end of the applicable sentencing guideline range as determined by the Court. The  
9 Defendant may recommend any legal sentence he deems appropriate.

10 Additionally, the United States agrees to recommend any sentence imposed in  
11 16-CR-00084-WFN-1 (Supervised Release) be run concurrent to any sentence  
12 imposed in this matter.

13 10) Criminal Fine:

14 The United States and the Defendant are free to make whatever  
15 recommendation concerning the imposition of a criminal fine that they believe is  
16 appropriate.

17 11) Supervised Release:

18 The United States and the Defendant agree to recommend that the Court impose  
19 a 3 year term of supervised release to include the following special conditions, in  
20 addition to the standard conditions of supervised release:

21 a) that the Defendant participate and complete such drug testing and drug  
22 treatment programs as the Probation Officer directs; and

23 b) that the Defendant's person, residence, office, vehicle, and belongings are  
24 subject to search at the direction of the Probation Officer.

25 12) Mandatory Special Penalty Assessment:

26 The Defendant agrees to pay the \$100 mandatory special penalty assessment to  
27 the Clerk of Court for the Eastern District of Washington, at or before sentencing,  
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1 pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United  
2 States before sentencing as proof of this payment.

3 13) Payments While Incarcerated:

4 If the Defendant lacks the financial resources to pay the monetary obligations  
5 imposed by the Court, the Defendant agrees to earn the money to pay toward these  
6 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility  
7 Program.

8 14) Abandonment

9 The Defendant agrees to abandon the following listed ammunition to the  
10 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF): a single round of  
11 Federal, .45 Auto caliber ammunition, bearing head stamp, "Federal 45 Auto"

12 The Defendant agrees to take all steps as requested by the United States and  
13 ATF to effectuate the abandonment of the above-listed ammunition to ATF and  
14 hereby agrees to execute any and all forms and pleadings necessary to effectuate such  
15 abandonment. The Defendant consents to the disposal, including destruction, of the  
16 ammunition.

17 The Defendant waives any right he might otherwise have had to receive notice  
18 or a hearing with respect to any motion, pleading, order, or any other action that ATF  
19 might take, in its sole discretion, to carry out the abandonment, disposition, and  
20 destruction of the ammunition. Defendant's waiver includes, without limitation, all  
21 common law, statutory, and constitutional claims or challenges, on any grounds,  
22 arising at any time from, or relating to, the seizure, abandonment, disposition, and  
23 destruction of assets, including any such claim for attorney fees and litigation costs.

24 15) Additional Violations of Law Can Void Plea Agreement:

25 The Defendant and the United States agree that the United States may at its  
26 option and upon written notice to the Defendant, withdraw from this Plea Agreement  
27 or modify its recommendation for sentence if, prior to the imposition of sentence, the  
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1 Defendant is charged or convicted of any criminal offense whatsoever or if the  
2 Defendant tests positive for any controlled substance.

3 16) Appeal Rights:

4 Defendant understands that he has a limited right to appeal or challenge the  
5 conviction and sentence imposed by the Court. Defendant hereby expressly waives  
6 his right to appeal his conviction and the sentence the Court imposes. Defendant  
7 further expressly waives his right to file any post-conviction motion attacking his  
8 conviction and sentence, including a motion pursuant to 28 U.S.C. § 2255, except one  
9 based upon ineffective assistance of counsel based on information not now known by  
10 Defendant and which, in the exercise of due diligence, could not be known by  
11 Defendant by the time the Court imposes the sentence.

12 Should the Defendant successfully move to withdraw from this Plea Agreement  
13 or should the Defendant's conviction on the sole count of the Indictment be dismissed,  
14 set aside, vacated, or reversed, this Plea Agreement shall become null and void; the  
15 United States may move to reinstate all counts of Indictment No. 2:20-CR-00139-  
16 WFN; and the United States may prosecute the Defendant on all available charges  
17 involving or arising from July 2, 2019. Nothing in this Plea Agreement shall preclude  
18 the United States from opposing any post-conviction motion for a reduction of  
19 sentence or other attack of the conviction or sentence, including, but not limited to,  
20 proceedings pursuant to 28 U.S.C. § 2255 (writ of habeas corpus).

21 However, nothing precludes the United States or the Defendant from appealing  
22 an illegal sentence or one not in accordance with the correct application of the  
23 sentencing guidelines, consistent with the terms of this plea.

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17) Integration Clause:

The United States and the Defendant acknowledge that this document constitutes the entire Plea Agreement between the United States and the Defendant, and no other promises, agreements, or conditions exist between the United States and the Defendant concerning the resolution of the case. This Plea Agreement is binding only upon the United States Attorney's Office for the Eastern District of Washington, and cannot bind other federal, state or local authorities. The United States and the Defendant agree that this agreement cannot be modified except in a writing that is signed by the United States and the Defendant.

Approvals and Signatures

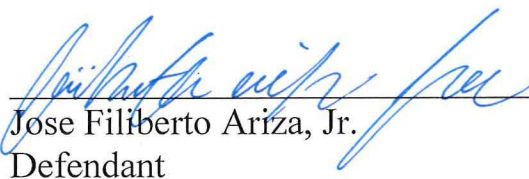
Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

Joseph H. Harrington  
Acting United States Attorney

  
Patrick J. Cashman  
Assistant U.S. Attorney


3/23/2021  
Date

1 I have read this Plea Agreement and have carefully reviewed and discussed  
2 every part of the agreement with my attorney. I understand and voluntarily enter into  
3 this Plea Agreement. Furthermore, I have consulted with my attorney about my  
4 rights, I understand those rights, and I am satisfied with the representation of my  
5 attorney in this case. No other promises or inducements have been made to me, other  
6 than those contained in this Plea Agreement and no one has threatened or forced me in  
7 any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am  
8 guilty.  
9

10   
11 Jose Filiberto Ariza, Jr.  
12 Defendant

3/24/21  
Date

13 I have read the Plea Agreement and have discussed the contents of the  
14 agreement with my client. The Plea Agreement accurately and completely sets forth  
15 the entirety of the agreement between the parties. I concur in my client's decision to  
16 plead guilty as set forth in the Plea Agreement. There is no legal reason why the  
17 Court should not accept the Defendant's plea of guilty.

18   
19 Colin Prince  
20 Attorney for the Defendant

3/24/21  
Date